IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11245 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SWAPNIL D GHODADRA

Versus

GUJARAT STATE PHARMACY COUNCIL

Appearance:

1. Special Civil Application No. 11245 of 2004

MR AJAY R MEHTA for Petitioner No. 1

MR ARUN D OZA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 05/11/2004

ORAL JUDGEMENT

1. The appearance of the Government Pleader in this matter is permitted to be withdrawn. Mr. Arun D. Oza learned advocate appears for the respondent Council.

2. The petitioner herein has prayed for a direction

to the respondent Council to forthwith issue a Proof of Registration/Character Certificate recording the petitioner's date of birth as 26/08/1980 instead of 26/06/1980.

3. Learned counsel for the respondent has pointed out that the respondent Council has no jurisdiction to entertain and effect such change in the school record i.e. in the certificate of H.S.C., and the appropriate remedy available to the petitioner is to approach the Judicial Magistrate, First Class, having jurisdiction under section 13(3) of the Registration of Births & Deaths Act, 1969.

4. Learned counsel for the respondent Council has relied upon a decision of the Division Bench rendered in Letters Patent Appeal No.699 of 2003 dated 11.8.2003, wherein, the Division Bench has dealt with the very same issue. In para 4 of the said decision the Division Bench held as under:

> "4. ...Therefore, in view of Regulation 12-A Gujarat Secondary Education Regulations, 1974, school record could not have been corrected after the son of appellant had left the school. The only remedy of the appellant was to approach learned Magistrate, First Class, having jurisdiction in the matter for redressal of his grievance as provided under Section 13(3) of the Act. Therefore, the learned Single Judge was justified in concluding that the appellant has alternative remedy and that it was not necessary to entertain the petition filed under Article 226 of the Constitution."

5. Heard learned counsel for the respective parties. On 08/09/2004, by way of ad-interim relief this Court had directed the respondent Council to issue a Proof of Registration/ Character Certificate to the petitioner. The said direction has not been complied with so far. Hence, without entering into the complications with respect to the non-implementation of the said order, and considering the law laid down by the Division Bench of this Court, the appropriate remedy for the petitioner would be to approach the Judicial Magistrate, First Class, for necessary correction in the school record of the petitioner.

5. At this stage Mr. Ajay R. Mehta learned advocate for the petitioner submitted that in view of the urgency in the matter, it would be appropriate if the

respondent Council is directed to carry out the necessary correction in the record of the petitioner within a reasonable time.

6. In view of the aforesaid statement, Mr. Arun D. Oza learned advocate for the respondent Council has submitted that if the petitioner approaches the respondent Council with necessary certificates including his birth certificate, the respondent Council will take necessary action in the matter.

7. In view of the above, the petitioner is directed to approach the respondent Council with necessary certificates, including his birth certificate, and the respondent Council shall do the needful, by issuing the corrected certificate to the petitioner. The said exercise shall be completed on or before 16th November, 2004.

8. Subject to the above observations & directions, the petition is disposed of. Rule is made absolute to the aforesaid extent with no order as to costs. D.S.P.

[K.S. JHAVERI, J.]

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